

**From:** Darcy Forsell  
**To:** [Davis, Kris](#)  
**Cc:** [Margaret King](#); [Julie Ainsworth-Taylor](#)  
**Subject:** BSRE Point Wells LP Urban Center Application - Shoreline Comment Letter of 6/1/18  
**Date:** Friday, June 01, 2018 4:04:43 PM  
**Attachments:** [Shoreline Comment Letter.pdf](#)

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Attached please find the City of Shoreline's comment letter dated 6/1/18.

*Darcy Forsell*

**Legal Assistant**

**City Attorney's Office | City of Shoreline**

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SHORELINE  
CITY COUNCIL

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June 1, 2018

The Honorable Peter Camp, Hearing Examiner  
Snohomish County  
Office of Hearings Administration  
3000 Rockefeller Ave M/S 405  
Everett, WA 98201

VIA EMAIL: [hearing.examiner@snoco.org](mailto:hearing.examiner@snoco.org)

**RE: BSRE Point Wells LP Urban Center Application  
Hearing Dates May 16, 2018 – May 24, 2018**

The Honorable Peter Camp:

The City of Shoreline (“Shoreline”) thanks you for the opportunity to submit additional comments in the above referenced matter. Shoreline attended all days of the hearing in which Snohomish County and the BSRE Point Wells LP (“BSRE”) presented witnesses. Nothing presented during this time has changed Shoreline’s general concurrence with the Snohomish County Departments of Planning and Development Services and Public Works (collectively, “Snohomish County”) recommendation to deny the Point Wells Project applications<sup>1</sup> pursuant to Snohomish County Code (SCC) 30.61.220.

As you know, SCC 30.61.220 provides, emphasis added:

When denial of a non-county proposal can be based on grounds which are ascertainable without preparation of an environmental impact statement, the responsible official may deny the application and/or recommend denial thereof by other departments or agencies with jurisdiction without preparing an EIS in order *to avoid*

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<sup>1</sup> The Point Wells project applications are denoted as Snohomish County File Nos. 11-101457 LU, 11-101461 SM, 11-101464 RC, 11-101008 LDA, 11-101007 SP, and 11-101457 VAR. These applications and the development sought pursuant to them will collectively be referred to in this comment letter as the “Point Wells Project”.

*incurring needless county and applicant expense*, subject to the following:

- (1) The proposal is one for which a DS has been issued or for which early notice of the likelihood of a DS has been given;
- (2) Any such denial or recommendation of denial shall be supported by express written findings and conclusions of ***substantial conflict with adopted plans, ordinances, regulations or laws***; and
- (3) When considering a recommendation of denial made pursuant to this section, the decision-making body may take one of the following actions:
  - (a) Deny the application; or
  - (b) Find that there is ***reasonable doubt that the recommended grounds for denial are sufficient*** and remand the application to the responsible official for compliance with the procedural requirements of this chapter.

The purpose of this provision is to allow denial of an application for which the basis can be ascertained wholly apart from the environmental issues which would be disclosed through the SEPA review process. *Case ZA 9112425 Burgess/Grade Inc.*, Feb. 11, 1993 (applying former SCC 23.16.280). Or, as stated in the *Burgess* case, this provision allows Snohomish County, in those cases where it has identified one or more significant adverse environmental impacts and where a Determination of Significance (DS) has been issued, to save everybody time and money by denying a project which would be denied in any event because of shortcomings wholly unrelated to SEPA. *Id.*

Thus, the Hearing Examiner now has two choices before him: Deny the application if the evidence indicates there is substantial conflict with plans, ordinances, regulations, or laws; *or*, Remand the application if there is reasonable doubt that the grounds for denial are sufficient.<sup>2</sup>

It must be noted that the “reasonable doubt” standard only applies if the Hearing Examiner seeks to reject the Planning Department’s recommendation. In other words, in reviewing the recommendation of the denial the Hearing Examiner should

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<sup>2</sup> Reasonable doubt is not a standard generally seen in land use proceedings but within the criminal or constitutionality realms. While Washington Courts have not quantified the level of certainty needed for the reasonable doubt standard, many reasonable persons may equate it to a greater than 90 percent standard of certainty.

give considerable deference to the Planning and Public Works Department's interpretation of the plans and regulations it administers<sup>3</sup> and that the Planning Department's conclusion as to whether there is substantial conflict with the pertinent approval criteria need only be supported by a "preponderance of evidence."<sup>4</sup> In fact, the Hearing Examiner must confirm the denial *unless* after reviewing the Planning Department's recommendation utilizing the above deference and standard the Hearing Examiner concludes there is a "reasonable doubt" regarding the Department's conclusion that such a conflict exists. This is a high standard, and nothing presented by BSRE in the hearing supports a finding that the Planning Department's conclusion of substantial conflict with the code was insufficient, much less a reasonable doubt that it erred in its conclusion.

At the hearing, the Hearing Examiner also inquired as to the meaning of "substantial conflict."<sup>5</sup> Merriam-Webster online defines "substantial" as consisting of or related to substance; not imaginary or illusory; important, essential; being largely but not wholly that which is specified. As for "conflict" is defines it as a lack of agreement; a controversy. In prior Snohomish County Hearing Examiner cases, "substantial conflict" was interpreted as a "direct conflict." See, e.g. *Case 95 109077 West Coast Inc.*, Dec. 10, 1997; *Case 95 109067 Pacific Properties*, Nov. 4, 1997. The Hearing Examiner also inquired whether a "substantial conflict" includes a "resolvable conflict." In other words, if BSRE *could* somehow modify the Point Wells Project or if Snohomish County granted variances and deviations or imposed conditions, so that the conflicts were no longer substantial, then would a "substantial conflict" exist? Shoreline believes that the Hearing Examiner's review is not to consider a world of possibility under which BSRE might be able to demonstrate compliance, not that BSRE demonstrated that it could, but rather if the Departments conclusion that substantial conflict exists, then the recommendation of denial should stand.

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<sup>3</sup> See, e.g. *Case 04 112641 Rhod-Azalea and 35<sup>th</sup> Inc.*, Nov. 30, 2004; *Case 02 100529 Smokey Point Business Park*, June 19, 2003.

<sup>4</sup> Preponderance of the evidence is the "more probable than not true" standard which here, would equate to a greater than 50 percent, however slight, of the evidence supporting substantial conflict. See, e.g. *Case 97 109702 Tor Corporation*, Jan. 31, 2005 and *Case 97 107104 West Coast Inc.*, Jan. 20, 1998 (both presented for denial pursuant to SCC 23.16.280 and applied preponderance standard).

<sup>5</sup> It must be noted that SCC 23.16.280 was the predecessor to SCC 30.61.220 and contains virtually the same language. SCC 23.16.280 originally required "irreconcilable conflict" but was amended via Ordinance 93-077 to change the language to what it is today – "substantial conflict." The reason for changing the terminology may have come from a 1987 case that stated "'irreconcilable' was a very strong and restrictive word which basically means that the conflict must be of such a magnitude that it is impossible to overcome it by any action which the approving authority might undertake." *Case ZA84-0409 Horse County*, dated Feb. 11, 1987. Thus, by modifying the term the level of conflict was weakened.

## **1. THERE IS NO HIGH CAPACITY TRANSIT AT POINT WELLS**

For the Point Wells Project, not only are there direct, substantial conflicts with Snohomish County's plans and regulations but these conflicts are not resolvable by Snohomish County. The primary conflict that is not resolvable by Snohomish County is that to develop an Urban Center, there must be high capacity transit.

Snohomish County Policy LU 3.A.3<sup>6</sup> sets forth the County's adopted characteristics and criteria for Urban Centers:

Urban centers shall be located adjacent to a freeway/highway and a principal arterial road, and within one-fourth mile walking distance from a transit center, park-and-ride lot, or be located on a regional high capacity transit route.

In addition, Policy LU 3.A.2 provides, in relevant part:

Urban Centers shall be compact (generally not more than 1.5 square miles), pedestrian oriented areas within designated Urban Growth Areas with good access to higher frequency transit and urban services ...

As was noted by the Growth Management Hearings Board in 2011 and discussed below, good access to high-capacity transit services is at the core of Snohomish County's Urban Center policies. Based on Snohomish County's own words, the Growth Board concluded that transit access and linkage were essential characteristics of an Urban Center.<sup>7</sup> Thus, an Urban Center at Point Wells was never consistent with these Comprehensive Plan Policies given that lack of high capacity transit and continues to be in direct, substantial conflict today.

As to development regulations, SCC 30.21.025(1)(f) states the intent of the Urban Center zoning district:

The intent and function of the Urban Center zone is to implement the Urban Center designation on the future land use map by providing a zone that allows a mix of high-density residential, office and retail uses with public and community facilities and pedestrian connections located within one-half mile of existing or planned stops or stations for high capacity transit routes such as light rail or

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<sup>6</sup> References to Policies and Code regulations are those BSRE is vested to, via Ordinances 09-038, 09-051, 09-079 and 09-080.

<sup>7</sup> May 17, 2011 Corrected FDO at 1. The Growth Board stated an extension of a King County Metro bus line would not be express or high capacity transit.

commuter rail lines, regional express bus routes, or transit corridors that contain multiple bus routes or which otherwise provide access to such transportation as set forth in SCC 30.34A.085.

Thus, like the comprehensive plan policies articulated, the development regulations state that existing or planned high capacity transit is necessary for an Urban Center. At the time of BSRE's application, the SCC did not define "high capacity transit" but SCC 30.21.025(1)(f) provides examples of what classifies as high capacity transit. In addition, what should be considered "high capacity transit" in 2011 can be drawn from the Puget Sound Regional Council which denotes its transit designed to carry high volumes of passengers in an efficient and quick manner.<sup>8</sup> Similarly, Chapter 81.104 RCW is Washington's high capacity transportation law in effect at the time of vesting stated that high capacity transit provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation operating principally in general purpose roadways and refers to such things as a rail fixed guideway system,<sup>9</sup> commuter rail, and bus rapid transit.

Extensive testimony was presented to the Hearing Examiner from BSRE that the requirement for high capacity was satisfied. BSRE spoke about the *potential* for a Sound Transit Sounder Rail Station to be provided at Point Wells, the provision of off-site access to transit via shuttles and, for the first time, the *concept* of a water taxi between Point Wells and Edmonds was submitted. These do not save the Point Wells Project from the high capacity transit requirement for the reasons stated below:

- There is no existing or planned Sounder Rail Station at Point Wells.

Looking at the Point Wells site itself, it is indisputable that there is no existing Sounder Rail Station/Stop at Point Wells. There was no evidence provided to the Hearing Examiner demonstrating that there are any tangible, existing plans for a Sounder Rail Station/Stop at Points Wells. While BSRE testified at the hearing that it contacted Sound Transit more than a decade ago about a station,<sup>10</sup> such superficial communications do not rise to the level of a "planned" station.

Shoreline contends that the Sounder Rail Station issue brings forth the concept of "resolvable" that the Hearing Examiner raised because the provision of a station is not within the control of Snohomish County, BSRE, or the Hearing Examiner. The ability to have a Sounder Rail Station at Point

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<sup>8</sup> See PSRC *Transit-Supportive Densities and Land Uses* – available at: <https://www.psrc.org/sites/default/files/tsdluguidancepaper.pdf>

<sup>9</sup> RCW 81.104.015(3) includes light, heavy, rapid rail system, monorail, trolley, etc.

<sup>10</sup> Testimony of Doug Luetjen noted the 2010 Letter and a request to consider a station in the Sound Transit 2 EIS in 2014.

Wells is solely within the control of Sound Transit and Burlington Northern Sante Fe (BNSF) Railroad. The fact that BSRE was willing to construct such a station at its own cost does not negate the control these two entities have.

The Sound Transit-BNSF relationship is a complex one with multiple agreements and easements controlling the Sounder Rail operations. See, Attachment A. First, there are easements that allow trains to operate during defined windows – with one easement per train that cost between \$27.5 million to \$79 million each. Will another one be needed for a station at Point Wells and, if so, who will pay for it? The record is silent in this regard. Second, there is a Commuter Rail Service Agreement that describes the terms of actual operation of the trains by BNSF and the compensation to be paid to BNSF which is based on a per train mile formula. Lastly, there is a Joint Use Agreement providing for mechanisms to determine the cost to Sound Transit for the maintenance of the corridor. How will Sound Transit fund the additional station operational costs under these Agreements? The record is silent in this regard. The Point Wells Project is in direct, substantial conflict with Snohomish County's plans and regulations as to a high capacity transit station for which only outside parties (and the taxpayers) can provide a resolution. In other words, this conflict is not resolvable by Snohomish County or BSRE alone.

- Van Pool/Shuttle Service does not meet the Urban Center's access to transit intent.

SCC 30.34A.085 provides that van pools or other means of transporting people on a regular schedule in high occupancy vehicles to operational stops or stations for high occupancy transit is one manner for addressing access to public transportation. BSRE relies on this provision to support its claim that providing van pools/shuttles to future light rail stations or existing park-and-ride lots satisfies the intent of the Urban Center. Shoreline while not elaborate on this except to say that as discussed below in 2011 the Growth Board said that high capacity transit was not satisfied by providing van pools to a park-and-ride lot 2.5 miles away.<sup>11</sup> If it didn't serve the comprehensive plan locational criteria in 2011, it doesn't satisfy it now and the light rail stations are even farther away than the park-and-ride lot.

- A Water Taxi does not meet the Urban Center's access to transit intent.

For the first time, BSRE has suggested it can satisfy the high capacity transit requirement by providing a water taxi between Point Wells and the City of Edmonds. Presumably BSRE bases this on SCC 30.34.085 but SCC 30.91H.108, a code provision that was not in existence at the time of vesting,

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<sup>11</sup> May 17, 2011 Corrected FDO at 21.

which includes passenger only ferries as high capacity transit. The Hearing Examiner should not permit BSRE to rely on the current SCC's definition and still remain vested to the former SCC. *East County Reclamation Co. v. Bjornsen*, 125 Wn. App. 432, 439 (2005) (applicant may not "cherry pick" between old and new regulations). Regardless, for the same reason that a van pool/shuttle transporting residents to transit miles away does not meet the Urban Center intent, a water taxi fails as well.

More importantly, BSRE provides no evidence on what legal requirements it must meet to operate a water taxi in Puget Sound. Nor does BSRE provide any information on where in the City of Edmonds the water taxi would load and unload passengers. Shoreline believes that it is highly unlikely that Washington State would allow BSRE to utilize the Edmonds-Kingston Ferry Terminal for this purpose. This would leave the Edmonds Marina as the only known location, with the Marina appearing to be at least two (2) miles from the existing Sounder Rail Station. Given that transit planning generally considers 1/4 to 1/2 mile as a reasonable walking distance, it is unlikely that water taxi passengers would walk this distance to access the Sounder train. And, of course, BSRE would need to secure an agreement with the Marina for this purpose. Thus, similar to the Sounder Station, the provision of a water taxi is out of BSRE's control as one would assume the State of Washington or the US Coast Guard would control licensing and whether or not moorage is available at the Edmonds Marina was never presented.

BSRE's hypothetical or illusory plans for high capacity transit or access to it is insufficient to demonstrate substantial compliance. The evidence is clear that the Point Wells Project is in direct, substantial conflict with Snohomish County's comprehensive plan policies and development regulations for Urban Centers as there are no existing or planned stops or stations for high capacity transit of any type nor do BSRE's proposals to transport residents to transit miles away satisfy the intent of the Urban Center articulated by these policies and regulations. Denial of the project applications is warranted on this basis alone.

## **2. POINT WELLS NEVER SATISFIED THE URBAN CENTER CRITERIA**

Shoreline would also like to take the opportunity to denote the first direct, substantial conflict with Snohomish County plans and regulations - the Urban Center designation itself. Over the course of the hearing, much was said about the Urban Center designation for the Point Wells site with BSRE asserting that since Snohomish County designated Point Wells as an Urban Center than it should be permitted to build an Urban Center regardless of the complexities of the site and relevant code provisions. While Shoreline does not dispute BSRE's vested rights, these rights do not equate to a right to build to the highest possible use of the site.



To demonstrate the direct, substantial conflict with Snohomish County's plans and regulations in regards to the Urban Center let's look at its history. In 2001, with the adoption of Ordinance 01-052, Snohomish County established an Urban Center Demonstration Program which targeted areas along Interstate 5, Highway 99, and Highway 527 and required developments to "front on or take access off a major transit corridor or be located within one-quarter mile of a transit agency's park-n-ride facility." In 2005, as part of Snohomish County's 10-year Comprehensive GMA Update, Ordinance 05-069 was adopted and, at Section 1(C)14(f) of the ordinance stated: "Property designated Urban Industrial at Point Wells will be considered for future re-designation to Mixed Use/Urban Center provided that the necessary studies addressing permitting, site development, and environmental impacts are submitted to the County."<sup>12</sup> This section became Policy LU 5.B.12 which stated: "Within the Southwest UGA, parcels designated Urban Industrial (on Point Wells) shall be considered for future resignation upon receipt of necessary studies addressing all permitting considerations such as site development, environmental impacts and issues."<sup>13</sup> The need for studies was undoubtedly required because the 2005 Update Final Environmental Impact Statement made no reference to Point Wells and, in fact, Shoreline has been unable to find how this policy even became part of the 10 year update.

In 2008, BSRE's predecessor in interest, Paramount of Washington LLC,<sup>14</sup> submitted a private comprehensive plan amendment and associated rezone, referenced as *Paramount – SW 41 Docket XIII* ("Paramount Amendment") to be included in Snohomish County's docketed amendments. A Draft Supplement Environmental Impact Statement (SDEIS) for the Paramount Amendment was issued February 2009.<sup>15</sup> On March 30, 2009, prior to the publication of a Final Environmental Impact Statement, the Snohomish County Planning Commission provided "no recommendation" to the Snohomish County Council on the Paramount amendment. The County Council, on August 12, 2009, adopted Ordinance 09-038 which approved the Paramount Amendment and Ordinance 09-051 which served to further implement the Paramount Amendment. Appeals of these ordinances were filed with the Growth Management Hearings Board (Growth Board).<sup>16</sup> Despite this

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<sup>12</sup> Ordinance 05-069, at Page 24

<sup>13</sup> Ordinance 05-069, Exhibit B, Page LU-7.

<sup>14</sup> Paramount was also represented by Gary Huff, the attorney currently representing BSRE.

<sup>15</sup> The SDEIS supplemented the environmental review Snohomish County completed in 2005 for the 10-year Update of its GMA Comprehensive Plan.

<sup>16</sup> *Shoreline, Woodway, and Save Richmond Beach, et al v. Snohomish Count and Paramount of Washington (Intervenor)*, CPSGMHB Case No. 09-3-0013c, consolidated November 18, 2009.

appeal, on May 12, 2010, the County Council adopted Ordinance Nos. 09-079 and 09-080 establishing development regulations for Urban Centers. Appeals of these ordinances were filed with the Growth Board.<sup>17</sup>

The Growth Board coordinated these appeals for the convenience of the parties and, on April 25, 2011, issued a Final Decision and Order which found that Snohomish County's designation of Point Wells as an Urban Center violated the Growth Management Act, chapter 36.70A RCW, in four respects - the designation was inconsistent with the County's Urban Center comprehensive plan provisions; chiefly that access to high-capacity transit services is at the core of Snohomish County's Urban Center policies; the action thwarted GMA compliance by the City of Shoreline; the action lacked consistency with the comprehensive plans of adjacent jurisdictions; and the action was not guided by several GMA goals – with the Growth Board imposing the extraordinary remedy of invalidating Ordinance Nos. 09-038 and 09-051.<sup>18</sup> The Growth Board additionally found that Snohomish County's actions in regards to the invalidated ordinances did not comply with the State Environmental Policy Act, chapter 43.21C RCW. Snohomish County's resolution for these violations was to "amend the County's Urban Center policies, deleting reference to Point Wells as an Urban Center, and reversing some of the amendments previously made in order to 'fit' Point Wells into the Urban Centers designation" and to do some superficial environmental analysis.<sup>19</sup> It was this action that converted Point Wells to an Urban Village designation that remains on the site today.

Thus, while Shoreline recognizes the Hearing Examiner cannot change the past actions of Snohomish County in designating Point Wells as an Urban Center, this does not result in the ability to construct an Urban Center that does not conform to the intent of the designation and the applicable regulations as BSRE asserts.

### **3. THE NEED FOR VARIANCES AND DEVIATIONS DEMONSTRATES SUBSTANTIAL CONFLICT**

Evidence presented to the Hearing Examiner demonstrated the need for BSRE to obtain several deviations or variances to build the Point Wells Project at the scale they desire. Of course the need for these mechanisms allowing a developer to be excused from compliance with regulations actually demonstrates direct conflict

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<sup>17</sup> *Shoreline, Woodway, and Save Richmond Beach v. Snohomish County and BSRE Point Wells (Intervenor)*, CPSGMHB Case No. 09-3-0011c, consolidated August 5, 2010.

<sup>18</sup> The Growth Board's Order can be reviewed at:

<http://www.gmhbb.wa.gov/Global/RenderPDF?source=casedocument&id=3600>

On May 15, 2011, the Growth Board issued a Corrected Final Decision and Order but only as to clerical errors and can be reviewed at:

<http://www.gmhbb.wa.gov/Global/RenderPDF?source=casedocument&id=3127>

<sup>19</sup> Order Finding Compliance and Rescinding Invalidity, December 20, 2012. The Order can be reviewed at: <http://www.gmhbb.wa.gov/Global/RenderPDF?source=casedocument&id=3194>

because without approval the Point Wells Project won't be able to proceed. Some may assert that these mechanisms have the unintended effect of raising "reasonable doubt" about direct conflict with Snohomish County's regulations because, if granted, the conflict is resolved. But variances and deviations are discretionary actions of Snohomish County for which BSRE has failed to provide evidence showing a rational basis why its project should be uniquely benefitted.

**4. THE SECOND ACCESS ROAD IS AN UNRESOLVABLE, SUBSTANTIAL CONFLICT**

Much has been said about the second access road and the feasibility of its construction. This comment letter will not delve into the engineering details of construction but rather point out that not only is this roadway a necessary and required piece of infrastructure for the Point Wells Project for which private property rights acquisition is essential. BSRE has provided no evidence demonstrating ownership of property or easements necessary to connect this roadway into the Town of Woodway's transportation network. As was the case with the Sounder Train, the resolution of this conflict is in the hands of outside parties and cannot be resolved by BSRE and/or Snohomish County alone.

**5. SNOHOMISH COUNTY'S ACTION IN DESIGNATING POINT WELLS AS AN URBAN CENTER DOESN'T RESULT IN COMPLIANCE WITH APPLICABLE REGULATIONS**

BSRE testified that it has a right to build the Point Wells Project as it proposes because Snohomish County designated and zoned the property as an Urban Center. The mere fact that Snohomish County designated and zoned property at an intensity that may not be capable of being realized is not a basis for approval nor does it allow a developer to escape from the applicable regulations.

For example, at the hearing BSRE asserted that since the SCC 30.34A.030 sets a minimum Floor to Area Ratio (FAR) that it must be permitted to build at the intensity it proposes or it won't be able to satisfy the minimum FAR standard given the complexities of the site (namely critical areas and the railroad). SCC Chapter 30.34A Urban Centers was developed to cover a broad range of sites and was not customized for the benefit of BSRE and the Point Wells site. If BSRE cannot satisfy the minimum FAR with a project that complies with other applicable regulations, then there is a direct, substantial conflict for which the only resolution is amendment of the regulation; a function of the county council.

Like its inability to satisfy the need for high capacity transit, BSRE's inability to meet the minimum FAR is a substantial conflict for which the only resolve is in the hands of the County Council. Which, of course, any amendment to the SCC to

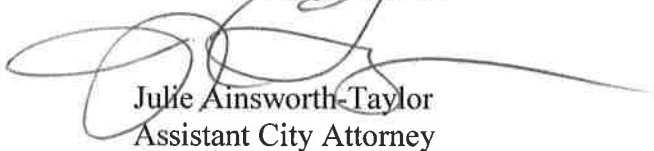
modify the FAR would destroy BSRE's vested rights for an Urban Center project, leaving it subject to current Urban Village regulations.

### **Conclusion**

In conclusion, despite the hours of hearing and the plethora of documentation submitted to the Hearing Examiner, the Point Wells Project remains in direct, substantial conflict with the Urban Center plans and regulations of Snohomish County. As detailed above, these conflicts cannot be resolved by subsequent modifications of the permit application materials. BSRE has had seven years to provide Snohomish County with information demonstrating that the Point Wells Project complies with Snohomish County plans and regulations. It has not done so and to allow BSRE to continue forward on a project that even if environmental review was completed, could not be approved because of its substantial conflict with the high capacity transit requirement for an Urban Center.

Sincerely,

CITY OF SHORELINE



Julie Ainsworth-Taylor  
Assistant City Attorney

Attachments

ATTACHMENT A

# **SOUND TRANSIT STAFF REPORT**

**RESOLUTION Nos. R2003-22, R2003-23, R2003-24, R2003-25 and  
MOTION Nos. M2003-130, M2003-131, M2003-135, M2003-136**

## **Agreements with BNSF for Sounder Commuter Rail Service**

Meeting:	Date:	Type of Action:	Staff Contact:	Phone:
Board Meeting	12/17/03	Action	<b>Martin Minkoff, Sounder Commuter Rail Director</b> Jordan Wagner, Legal Counsel	(206) 398-5111  (206) 398-5224

Contract/Agreement Type:	✓	Requested Action:	✓
Competitive Procurement		Execute New Contract/Agreement	✓
Sole Source		Amend Existing Contract/Agreement	✓
Interlocal Agreement		Contingency Funds Required	
Purchase/Sale Agreement	✓	Budget Amendment Required	

*3Applicable to proposed transaction.*

### **OBJECTIVE OF ACTIONS**

To authorize the execution of eight agreements covering the purchase and sale of right-of-way and right-of-way interests, joint use conditions and services between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company (BNSF) for Sounder in the Everett to Seattle and Lakewood to Tacoma corridors.

### **ACTIONS**

Authorize the Chief Executive Officer to execute the following agreements with the Burlington Northern Santa Fe Railway Company, as generally agreed to in the May 2003 Term Sheet, Memorandum of Understanding, for the Everett to Seattle corridor and the Lakeview subdivision line (Tacoma to Nisqually):

- |                           |  |
|---------------------------|--|
| • Resolution No. R2003-22 | Purchase and Sale Agreement (Everett to Seattle)     |
| • Motion No. M2003-130    | Joint Use Agreement for Everett to Seattle           |
| • Motion No. M2003-131    | Service Agreement for Everett to Seattle             |
| • Resolution No. R2003-23 | Purchase and Sale Agreement (Station parcels)        |
| • Resolution No. R2003-24 | Purchase and Sale Agreement (Lakewood to Tacoma)     |
| • Resolution No. R2003-25 | Purchase and Sale Agreement (Nisqually to Lakewood)  |
| • Motion No. M2003-135    | Joint Use Agreement for Tacoma to Nisqually          |
| • Motion No. M2003-136    | Amendment to Service Agreement for Seattle to Tacoma |

### **KEY FEATURES**

- Purchases four perpetual property easements from Seattle to Everett from BNSF for Sounder services.
- Purchases property from BNSF in the Tacoma to Nisqually corridor for service and station improvements.

**SOUND TRANSIT**

**MOTION NO. M2003-130**

A motion of the Board of the Central Puget Sound Regional Transit Authority authorizing the Chief Executive Officer to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Easements.

**Background:**

The Joint Use Agreement contains the long-term provisions and compensation for operation of commuter service on the Burlington Northern Santa Fe Railway Company (BNSF) line, including requirements for a commuter operator on behalf of Sound Transit if it is ever other then BNSF. The term of the Joint Use Agreement is perpetual, linked in conjunction with the four easements.

**Motion:**

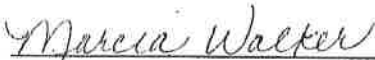
It is hereby moved by the Board of the Central Puget Sound Regional Transit Authority that the Chief Executive Officer is authorized to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Easements.

APPROVED by the Board of the Central Puget Sound Regional Transit Authority at a special meeting thereof held on December 17, 2003.



Ron Sims  
Board Chair

**ATTEST:**



Marcia Walker  
Board Administrator

- Provides for the conditions of joint use in each corridor; Sound Transit's commuter services use in the Everett to Seattle corridor and BNSF continued freight use in the Nisqually to Tacoma corridor.
- Purchases operations services from the BNSF to operate service in both corridors.

## **OVERVIEW OF PRINCIPAL AGREEMENTS**

The principal agreements described below provide the basis to proceed with Commuter Rail Service between Everett and Seattle and between Lakewood and Tacoma. The agreements are the product of several years of discussion with BNSF and, more recently, 12 months of intensive negotiations to define mutually agreeable terms upon which Sound Transit would obtain from BNSF the necessary access to BNSF tracks and rights-of-way. The agreements below are based upon the principles embodied in the non-binding Term Sheet, Memorandum of Understanding between Sound Transit and BNSF dated May 28, 2003.

The Everett to Seattle and Lakewood to Tacoma transactions would be enabled by the following actions for the Board's consideration.

### **Everett to Seattle Corridor Transactions**

**Resolution No. R2003-22** - Authorizing the Chief Executive Officer to execute a Purchase and Sale Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for the purchase of real property interests required for Everett to Seattle Commuter Rail Service.

Through the **Purchase and Sale Agreement**, Sound Transit would purchase under threat of condemnation four perpetual easements with which to operate four round-trip, peak-direction-only Commuter Trains (one for each easement) between Everett and Seattle:

- Closing of First Easement
  - On December 17, 2003
  - \$79 million payment
- Closing of Second Easement
  - In December 2004
  - \$79 million payment
  - Conditions of the Closing of the Second Easement are:
    - ♦ BNSF providing to Sound Transit on or before March 31, 2004, plans, specifications and design documents completed to 30% level of completion for the Second Easement Improvements (i.e., projects within Seattle), and Third Easement Improvements (i.e., projects between Seattle and Everett—not inclusive), in accordance with the Environmental Impact Statement (EIS) and Record of Decision (ROD).
    - ♦ BNSF providing to Sound Transit on or before January 9, 2004 a preliminary estimate of the wetland impacts resulting from the Second Easement Improvements, Third Easement Improvements, and Fourth Easement Improvements (i.e., projects in Everett: Lowell Siding, Delta Yard, and other project elements in the Everett Loop).
    - ♦ BNSF providing to Sound Transit on or before February 29, 2004 a more precise estimate of the maximum area of wetland impacts resulting from the Second Easement Improvements, Third Easement Improvements and Fourth Easement Improvements in accordance with the EIS and ROD.
    - ♦ BNSF providing to Sound Transit on or before August 31, 2004, plans, specifications and design documents completed to 30% level of completion for the Fourth Easement Improvements in accordance with the EIS and ROD.



- If the permits for Lowell Siding are denied or deemed unobtainable prior to the closing of the Second Easement, then BNSF will have the option to not close (with no second \$79 million payment by Sound Transit and no trains beyond Train #1).
- Closing of Third Easement
  - In December 2006
  - \$50 million payment
  - Conditions of the Closing of the Third Easement are:
    - If the permits for the Third Easement Improvements are denied or deemed unobtainable prior to the closing of the Third Easement, then Sound Transit will have the option to not close (with no third \$50 million payment by Sound Transit and no trains beyond Train #1 and Train #2).
- Closing of Fourth Easement
  - December 2007
  - \$50 million payment
  - Conditions of the Closing of the Fourth Easement are:
    - If the permits for the Fourth Easement Improvements are denied or deemed unobtainable prior to the closing of the Fourth Easement, then Sound Transit will have the option to not close (with no fourth \$50 million payment by Sound Transit and no trains beyond Train #1, Train #2, and Train #3).
- Post Closing Options
  - Resale of Second Easement to BNSF - Following the December 2004 closing and \$79 million payment to BNSF, if the permits for projects within the City of Seattle do not appear to be likely to be obtained, Sound Transit would have the option of "selling back" the easement to BNSF for \$27.5 million without interest. Such a determination would be made no sooner than November 2006 and no later than November 2010.
  - Resale of Third and Fourth Easements to BNSF - If the respective closings for the third and fourth easements do occur, and the \$50 million payments for each respective easement is made to BNSF, and Sound Transit is subsequently unable to obtain said permits (or deemed unlikely to be obtained), then Sound Transit would have the option of "selling back" such easements to BNSF for \$50 million each (without interest). The option for the third easement must be exercised no sooner than December 2008 and no later than December 2012 and for the fourth easement no sooner than December 2009 and no later than December 2013.

**Motion No. M2003-130** - Authorizing the Chief Executive Officer to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Easements.

The **Joint Use Agreement** contains the long-term provisions and compensation for operation of commuter service on the BNSF line, including requirements for a commuter operator on behalf of Sound Transit if it is ever other than BNSF. The term of the Joint Use Agreement is perpetual, linked in conjunction with the four easements. Some key elements include:

- In conjunction with the Joint Use Agreement, the Easements define the time "windows" during which up to four commuter trains (one for each easement) in each direction can operate. The windows state the overall time period during which the trains can operate in the morning and evening peak hours, together with parameters for the specific operation of the four trains in relation to each other. All four trains must arrive at King Street Station within the hours of 6:00 a.m. and 9:00 a.m., and depart within the hours of 3:30 p.m. and 6:30 p.m. As each new easement/train becomes operational, there are maximum "windows" within which trains must be scheduled. That is, when there are two trains, they cannot arrive/depart King Street Station (KSS) more than 40 minutes apart. When three trains are

operational, the departure and arrival of the first and last train must be spaced no more than 70 minutes apart. When four trains are operational, the departure and arrival of the first and last train must be spaced no more than 105 minutes apart.

- The Joint Use Agreement also defines Sound Transit's responsibility for the permitting process that links to the time periods for operation of trains described below. Sound Transit will "certify" to BNSF that all required permits have been obtained for a given stage, and time periods during which construction activity is precluded by governmental action thereafter will toll the time periods for construction activity before which BNSF is required to operate commuter trains. Permit restrictions would not be acceptable that impose conditions on the operation of the railroad (e.g., train speed restrictions after construction). The schedule for commencing train operations is as follows:

<b>Trainset Pursuant to First Easement</b> -----	December 22, 2003
<b>Trainset Pursuant to Second Easement</b> -----	Six months after ST certifies permits necessary for improvements within City of Seattle
<b>Trainset Pursuant to Third Easement</b> -----	Twenty-four months after ST certifies permits necessary for improvements between Seattle and Everett (not inclusive) (including the "marine" permits)
<b>Trainset Pursuant to Fourth Easement</b> -----	Twenty months after ST certifies permits for Everett area improvements (including Lowell Siding)

**Motion No. M2003-131** - Authorizing the Chief Executive Officer to execute a Commuter Rail Service Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Everett to Seattle Commuter Rail Services

The **Commuter Rail Service Agreement** describes the terms for the actual operation of commuter trains by BNSF (including liability and risk provisions similar to the Seattle to Tacoma agreement), and the compensation paid to BNSF for train crews, maintenance-of-way, and other expenses incurred in the operation of Sounder Service North. The compensation structure is simplified to include flat rates for maintenance and crews with inflation adjusters plus performance incentives after the initial pre-construction time period.

The key elements of the compensation paid to BNSF to operate the four round-trips include:

- For the operation of Train #1: \$30.00 per train mile (to be adjusted annually by agreed upon indexes starting in January 2005). This interim rate would remain in effect until three trains are operational. At that time the "Standard Rate" will apply: \$25.00 per train mile base for up to four car trains and increase with train length (\$25.33 for five car trains, 25.66 for six car trains, and 26.00 for seven car trains, \$26.25 for eight, \$26.50 for nine, and \$26.75 for 10 car trains), plus an on-time performance incentive formula. Base and incentives would be adjusted annually by mutually agreed upon indexes.
- For the operation of Train #2: \$60.00 per train mile. The interim rate would also remain in effect until three trains are operational. At that time the "Standard Rate" (plus on-time performance incentives) would apply as described above. Base and incentives would be adjusted annually by mutually agreed upon indexes.
- For the operation of Trains #3 and #4: "Standard Rate" with incentives as defined above.
- Special Event Service as provided under the agreement would be billed at \$45 per train mile during the interim period and \$35 per train mile once three weekday trains are operational. (Note: A special event "Seahawks" train would operate on Sunday, December 21, 2003.)

The term of the Commuter Service Agreement would be for 12 Years, with an option of 5 additional years (that must be agreed to by both parties), for a maximum term of 17 years. It is important to note that following the term of the service agreement; Sound Transit still has the perpetual right to operate trains with another service provider under the Joint Use Agreement summarized above. Sound Transit would then pay BNSF only for the on-going costs of maintenance-of-way, dispatch, and applicable incentives, in proportion to commuter use on the line.

#### **Nisqually to Tacoma Corridor Transactions**

**Resolution No. R2003-23** - Authorizing the Chief Executive Officer to execute a Purchase and Sale Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for the purchase of real property interests required for Sounder Commuter Rail Lakewood and South Tacoma station parcels.

**Resolution No. R2003-24** - Authorizing the Chief Executive Officer to execute a Purchase and Sale Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for the purchase of real property interests required for Sounder Commuter Rail service from Lakewood to Tacoma.

**Resolution No. R2003-25** - Authorizing the Chief Executive Officer to execute a Purchase and Sale Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for the purchase of real property interests required for Sounder Commuter Rail service from Nisqually to Lakewood.

Through the three **Purchase and Sale Agreements**, Sound Transit would purchase Tacoma to Lakewood properties under threat of condemnation. The first sale (to close in 2003) is composed of defined parcels of land at the Lakewood and South Tacoma Station sites. The next two agreements provide for Sound Transit's purchase of the BNSF Lakeview Subdivision from Tacoma (at approximately M Street) to Nisqually, subject to Sound Transit's satisfactory completion of due diligence on the properties. These purchases are divided into two distinct property sales: a north sale for right-of-way between Lakewood and Tacoma (to close in 2004); and a south sale for right-of-way between Lakewood and Nisqually (to close in 2005). BNSF would retain the right-of-way property north of the D to M Street Connector. BNSF would retain its common carrier obligations and the perpetual right to continue to operate its freight service.

In the event Sound Transit is not satisfied with the results of due diligence investigations on the north and south line properties, the agency may decline to go forward with the purchases of those properties and terminate the applicable purchase agreements. In doing so, it would forfeit certain non-refundable earnest money payments described below. If Sound Transit proceeds with the purchases, consistent with the May 2003 Term Sheet, Memorandum of Understanding, Sound Transit would pay BNSF \$31,948,500 over a four-year period for the entire acquisition.

The payments would be made as follows: \$8 million in 2003 (\$1.4 million would be non-refundable earnest money for the north line and \$3 million would be non-refundable earnest money for the south line); \$6 million in 2004, together with a Promissory Note for \$6 million, due in 2006 (for the north line); \$6 million in 2005, together with a Promissory Note for \$6 million due in 2007 (for the south line).

**Motion No. M2003-135** - Authorizing the Chief Executive Officer to execute a Joint Use Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company for Tacoma to Nisqually Railroad right-of-way and properties.

A long-term **Joint Use Agreement** would define the terms for long-term use of the line for Sound Transit commuter rail and BNSF rail freight purposes. Under this agreement (and the purchase agreements), Sound Transit is responsible for construction of the Lakewood to Tacoma track and signal and related improvements needed to implement the Sounder extension from Freighthouse Square to Lakewood (including the D to M Street Connector).

Until Sound Transit construction and rehabilitation of the line commenced, BNSF would perform all maintenance-of-way activities and rehabilitation, including track, signals, and related structures (non-station), and general right-of-way maintenance on the Lakeview Subdivision at BNSF expense. At such time that Sound Transit began construction on the Lakewood commuter section, Sound Transit would thereafter be responsible for all such maintenance activities on the line, and BNSF would then reimburse Sound Transit for the cost of regular and capital maintenance attributable to its freight use of the line.

BNSF would retain liability for freight related activity on the entire Lakeview Subdivision (except for the Lakewood and South Tacoma Station Parcels) and all liability for that section that BNSF maintains. Sound Transit would be responsible for incidents and occurrences stemming from the operation of the Sounder commuter service, and apportioned liability for that joint-use section that Sound Transit maintains.

BNSF would indemnify Sound Transit for environmental/hazardous waste liability stemming from prior BNSF activity on the property (and on-site activity of prior BNSF tenants) and future freight related activity, with Sound Transit responsible for that which may be caused in the future by Sounder commuter operations.

**Motion No. M2003-136** - Authorizing the Chief Executive Officer to execute a First Amendment to the Commuter Rail Service Agreement between the Central Puget Sound Regional Transit Authority and the Burlington Northern Santa Fe Railway Company

Under a First Amendment to the existing long-term Seattle to Tacoma **Commuter Rail Service Agreement**, BNSF would extend operation of commuter service from Tacoma to Lakewood, contingent upon closing of the pertinent purchase transactions, completion by Sound Transit of connecting trackage between Freighthouse Square and the Lakeview Subdivision, and rehabilitation of the line. BNSF would be compensated for the additional operating cost to extend commuter service to Lakewood, largely on the basis of the terms of the existing agreement (including reimbursement for actual costs of train crews and management plus performance incentives). Changes to the compensation provisions for the entire Tacoma to Seattle line (plus provision for extended service to Lakewood) reflecting indexed flat rates for maintenance of way, dispatch, administrative overhead and other mutually agreeable changes are being recommended.

## **BUDGET IMPACT SUMMARY**

<b>Action Outside of Adopted Budget:</b>	<b>Y/N</b>	<b>Y Requires Comment</b>
This Line of Business	N	
This Project	N	
Budget amendment required	Y	While sufficient funds are available in the 2003 and the 2004 slice of the budget, additional budget will be required to replenish the lifetime budget.
<b>Key Financial Indicators:</b>	<b>Y/N</b>	<b>Y Requires Comment</b>
Contingency funds required	N	
Subarea impacts	N	
Other party funding required (other than what is assumed in financial plan)	N	

N = Action is assumed in current Board-adopted budget. Requires no budget action or adjustment to financial plan.

## **BUDGET DISCUSSION**

The budget associated with the expenditures in these agreements occur in two general areas: right-of-way costs included in track and facilities capital projects and on-going operations costs which are a part of the transit operations budget.

Based on a thorough review of costs to complete and the completion of the BNSF negotiations, the estimated total lifetime capital budget for the Everett to Seattle track and facilities segment has been identified as \$303,114,343, which includes the budget for the purchase of four easements. The total lifetime capital budget for the Lakewood to Tacoma track and facilities segment has been identified as \$150,335,116, which includes budget to purchase the Lakeview subdivision line and associated station properties.

The estimate at completion figures were discussed with the Finance Committee at the December 3, 2003 meeting as a part of the 2004 Sounder budget process. These figures are also reflected in the Adopted 2004 Budget (Resolution No. R2003-19), adopting the lifetime budget for the Sounder program. The May 2003 Term Sheet, Memorandum of Understanding outlined the basis of negotiating the agreement with BNSF. An additional \$9,948,500 was negotiated to appropriately account for elements of reduced risk to Sound Transit. Additionally, through the negotiations, Sound Transit achieved other gains in value (e.g. receiving a perpetual easement in the Seattle to Everett corridor instead of the initial 97-year term).

While there is sufficient budget authorization to fund the 2003-funding requirement, staff will return to the Board during the first quarter of 2004 to seek a budget amendment to replenish the lifetime project budgets. Staff has committed to complete the cashflow of the projects in the Everett to Seattle and the Lakewood to Tacoma segments, and will also present that information to the Board during the first quarter of 2004.

In addition, staff will seek Board action to increase the 2004 Sounder transit operations budget in the first quarter of 2004 to provide budget authority for expenses related to paying BNSF for purchased transportation services and other costs related to service in the Everett to Seattle segment. As was discussed with the Board during the review of the Proposed 2004 Budget, the amount of these costs were not included in the Proposed 2004 Budget, because they were subject to the service agreements and were not known at the time the proposed budget was developed. Based upon the service agreements those costs are expected to be approximately \$826,000.

The joint use and service agreement costs have been calculated into Sound Transit's financial plan for future transit operations expenditures. These changes are within the agency's current financial plan.

### **REVENUE, SUBAREA, AND FINANCIAL PLAN IMPACTS**

The proposed action is affordable within the agency's current long-term financial plan, which was reviewed by the Board in November 2003, and is within subarea financial capacity. The action will have no new revenue impacts on Sound Transit beyond those identified above.

### **BUDGET TABLE**

Not applicable for these actions.

### **M/W/DBE – SMALL BUSINESS PARTICIPATION**

Not applicable for these actions.

### **PRIOR BOARD ACTIONS**

<b>Motion or Resolution</b>	<b>Summary of Action</b>	<b>Date of Action</b>
R2003-17	Authorization to acquire, dispose, lease, and transfer certain real property interests by negotiated agreement, negotiated purchase, by condemnation (including settlement), condemnation litigation, or entering administrative settlements, and to pay eligible relocation and re-establishment benefits to affected owners and tenants as necessary for the acquisition of various properties owned by BNSF and required for the Everett-Seattle Segment, the Lakewood-Tacoma Segment, and its possible extension.	09/25 /03
R99-22	Authorization to execute two contracts with BNSF - a long-term contract that will provide for BNSF to operate Sounder commuter rail service between Seattle and Tacoma (Operating Agreement) and a contract that will specify agreed-upon capital improvements on and around BNSF's existing railroad right-of-way, and provide for BNSF to construct those improvements and for Sound Transit to contribute approximately \$200 million and other public authorities to contribute approximately \$70 million to the cost of such construction (Construction Agreement).	08/26/99

### **CONSEQUENCES OF DELAY**

The above agreements are in keeping with the May 2003 Term Sheet, Memorandum of Understanding between Sound Transit and BNSF. That Term Sheet was made with the understanding that final agreements would be completed by year-end 2003.

### **PUBLIC INVOLVEMENT**

Not applicable to these actions.

### **LEGAL REVIEW**

JDW 12/15/03

**NEW ISSUE  
BOOK-ENTRY ONLY****RATINGS: Moody's: Aa1  
S & P: AAA  
See "RATINGS"**

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel, based upon an analysis of existing laws, regulations, rulings and court decisions and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2016 Parity Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986. In the further opinion of Special Tax Counsel, interest on the 2016 Parity Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Special Tax Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2016 Parity Bonds. See "TAX MATTERS."*



**THE CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY**  
**\$400,000,000\***

**Sales Tax and Motor Vehicle Excise Tax Bonds, Series 2016S-1 (Green Bonds)****Dated:** Date of initial delivery**Due:** As shown on inside cover

The Central Puget Sound Regional Transit Authority ("Sound Transit"), a Washington regional transit authority, is issuing its Sales Tax and Motor Vehicle Excise Tax Bonds, Series 2016S-1 (the "2016 Parity Bonds"), in the aggregate principal amount of \$400,000,000.\*

The 2016 Parity Bonds are being issued as fixed-rate bonds and will mature, subject to redemption prior to maturity, in the principal amounts on the dates and bear interest at the rates, all as set forth on the inside cover.

The 2016 Parity Bonds are being issued under a book-entry system, initially registered to Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York, which will act as initial securities depository for the 2016 Parity Bonds. Individual purchases of 2016 Parity Bonds are to be made in denominations of \$5,000 and any integral multiple thereof within a maturity, in book-entry form only, and purchasers will not receive certificates representing their interest in the 2016 Parity Bonds, except as described herein. Payments of principal of and interest on the 2016 Parity Bonds are to be made to DTC by the fiscal agent of the State of Washington, currently U.S. Bank National Association in Seattle, Washington (the "Bond Registrar"). Disbursements of payments to DTC participants is the responsibility of DTC, and disbursement of payments to beneficial owners of the 2016 Parity Bonds is the responsibility of DTC participants. The 2016 Parity Bonds are subject to redemption prior to maturity upon the terms and conditions and at the prices described herein.

Interest on the 2016 Parity Bonds is payable on each May 1 and November 1, commencing on May 1, 2017, until maturity or prior redemption.

The 2016 Parity Bonds are being issued (i) to pay or to reimburse Sound Transit for the payment of costs of constructing a portion of Sound Transit's System Plan and (ii) to pay costs of issuing the 2016 Parity Bonds.

The 2016 Parity Bonds are special limited obligations of Sound Transit payable from and secured solely by a pledge of the proceeds of certain sales and use taxes, motor vehicle excise taxes and rental car taxes imposed by Sound Transit, including taxes approved by the voters on November 8, 2016, and amounts, if any, in certain accounts held by Sound Transit. The pledge of such taxes and amounts in certain accounts to the payment of the 2016 Parity Bonds is subordinate to the pledge thereof to the payment of the Prior Bonds, as described herein. Sound Transit has reserved the right to issue additional Prior Bonds and Parity Bonds in the future. The 2016 Parity Bonds are not obligations of the State of Washington or any political subdivision thereof other than Sound Transit. The 2016 Parity Bonds are not secured by any lien, or charge upon any general fund or upon any money or other property of Sound Transit not specifically pledged thereto.

*The 2016 Parity Bonds are offered when, as and if issued and received by the Underwriters, subject to the approval of legality by Foster Pepper PLLC, Seattle, Washington, Bond Counsel to Sound Transit, and to certain other conditions. Certain tax matters will be passed upon by Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to Sound Transit. Certain legal matters will be passed upon for Sound Transit by its General Counsel and by Orrick, Herrington & Sutcliffe LLP, Seattle, Washington, Disclosure Counsel. Certain legal matters will be passed upon for the Underwriters by their counsel, Pacifica Law Group LLP, Seattle, Washington. It is expected that the 2016 Parity Bonds will be available for delivery in New York, New York, through the facilities of DTC, or to the Bond Registrar on behalf of DTC by Fast Automated Securities Transfer, on or about December 19, 2016.*

**Citigroup****Goldman, Sachs & Co.****BofA Merrill Lynch****J.P. Morgan****RBC Capital Markets****Wells Fargo Securities**

\_\_\_\_\_, 2016

\* Preliminary, subject to change.

## CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

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### *Notes to Financial Statements, continued*

incentives. The agreement was amended to extend BNSF's operations beyond Tacoma to the City of Lakewood and to add up to 8 additional one-way trips were added by way of commuter rail easements purchased by Sound Transit. Currently the agency is operating 11 of 13 round-trips provided under these agreements. Upon expiration of the service agreement, Sound Transit's use of BNSF track will be bound by a dormant Joint Use Agreement for BNSF's Seattle-Tacoma corridor.

**North Line**— BNSF operates four daily commuter rail round trips for Sound Transit under a service agreement. The service agreement expires in December 2020. At that time Sound Transit's four round trips under commuter rail easements purchased by Sound Transit from BNSF on its Seattle to Everett corridor will be governed by a now dormant joint use agreement.

**Rolling Stock**— Lease of the initial portion of its fleet of locomotives, passenger coaches and cab cars (rolling stock) to the National Railroad Passenger Corporation (Amtrak) for \$1. Under the agreement, Amtrak is obligated to repair, maintain and service the rolling stock at Amtrak's maintenance facility in return for payment by Sound Transit. By separate agreement, Amtrak subleased this rolling stock to BNSF for operation of Sounder Service. Both lease agreements are for a 40-year term, expiring in 2040.

**Maintenance Service Agreement**— Under the agreement Sound Transit pays a flat monthly fixed price dependent upon the number of one-way trips and train sets in operation for a baseline set of operating assumptions. A negotiated rate is also established for additional service above the baseline operating plan. The agreement expires in 2016.

**First Hill Streetcar**— This agreement establishes the minimum scope of work for the project and funding obligations for Sound Transit. In October 2010, Sound Transit agreed to fully fund \$132.8 million of the costs necessary to design, construct and operate the First Hill Streetcar that was established in the November 2009 funding and cooperative agreement, of which \$5.0 million is payable annually through 2023 for annual operations and maintenance expenses. The City will own and operate the First Hill Streetcar facilities and vehicles.

**Land Bank Agreement**— Sound Transit entered into an agreement called the Land Bank Agreement with WSDOT in July 2000 and as restated in December 2003, the purpose of which is to establish a framework within which WSDOT can from time to time convey portions of WSDOT property to Sound Transit and to make other portions of other WSDOT property available for non-highway use by Sound Transit in consideration for Sound Transit's funding of highway purpose improvements. In August 2010, as part of the Umbrella Agreement with WSDOT to complete the R8A Project, WSDOT agreed to grant Sound Transit land bank credits for all of its funding on the R8A projects as well as to extend the land bank agreement to 2080. Sound Transit will continue to earn land bank credits for projects involving highway improvements and use credits on projects that are located within the public highway right of way.

Sound Transit has guideways located on WSDOT property governed under multiple twenty-year airspace leases issued under the land bank agreement. These airspace leases have options to renew for an additional 20 years, at no additional cost or use of Land Bank Agreement credits. Should Sound Transit and WSDOT not enter into a new agreement at the end of the leases, property ownership transfers to WSDOT. At December 31, 2015, the value of the unused land bank credits that have not been conveyed by WSDOT to Sound Transit was \$294.8 million. This value is not recorded in the financial statements. The following table provides information on additions to and uses of credits accruing to the benefit of Sound Transit in 2015 and 2014.



## CENTRAL PUGET SOUND REGIONAL TRANSIT AUTHORITY

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### *Notes to Financial Statements, continued*

substantially comprised of a baseline cost rate for purchased transportation, as well as other costs provided for, but not included as part of the baseline. Baseline cost rates, including allocated costs, are established by no later than December 15<sup>th</sup> for the upcoming year and are reconciled to actual incurred by no later than March 31<sup>st</sup> of the year following. The current agreement was for 5 years and was extended to July 2017. The extension includes extended service to University and Capitol Hill Stations, commencing March 2016.

Sound Transit has also entered into the following agreements related to light rail or station operations:

***Downtown Seattle Transit Tunnel (DSTT) Agreement***— This agreement with King County and City of Seattle provides for the cost sharing with regard to the maintenance and operation in the Downtown Tunnel in exchange for the right to use the tunnel for light rail operations and to provide for the temporary continued joint-use for light rail and bus. Sound Transit's ongoing obligations include reimbursement of costs and payment of a prescribed share of King County DOT debt service owed for the original tunnel construction and to share costs for future capital repairs or replacements as they arise. Upon extension of light rail service to Northgate Station, Sound Transit shall become responsible for 100% of debt service. Compensation is calculated as reimbursement of certain King County DOT costs based on fixed percentages related to Sound Transit's share of usage of the DSTT. If Sound Transit does not use King County as its light rail operator, then Sound Transit may be required by the County to purchase the tunnel in order to continue light rail operations.

***Light Rail Agreements***— Sound Transit has entered into a variety of agreements to secure the right to operate light rail under, upon and over streets and property owned by the City of Seattle, Tukwila, SeaTac, the Port of Seattle and Bellevue granting permanent light rail access rights to operate its light rail service in the municipalities' right of way. The cost of public right of way improvements have been capitalized to rail access rights and include those costs necessary to operate light rail service, such as costs to acquire real property and relocate existing residents and businesses, as well as certain improvements to city right of way required under those agreements.

***WSDOT Umbrella Agreement for R8A Project and East Link Light Rail***— on August 26, 2010, Sound Transit was authorized to enter into an umbrella agreement with WSDOT to implement the remainder of the R8A project that consists of the I-90 Two-Way Transit and HOV Operations Project Stages 2 and 3 and the use of the I-90 center lanes for construction and operation of East Link. Sound Transit has agreed to fund Stages 2 and 3 of the I-90 Two Way Transit and HOV projects for \$153.2 million in exchange for a temporary construction airspace lease for the construction of light rail along the I-90 center lanes as well as a 40 year airspace lease with an option to renew for 35 years for the operation of light rail in the center lanes of I-90.

***Sounder***— Agreements have been entered into with the BNSF Railway Company (BNSF) for the operation of its Sounder commuter rail service and the National Railroad Passenger Corporation (Amtrak) for maintenance of the locomotives, cab and coach cars (rolling stock). Service between Everett and Seattle and Seattle and Tacoma is on rail right of way owned and operated by BNSF.

***South Line***— Service between Seattle and Lakewood are provided by BNSF under a 40-year service agreement for the operation of 18 one-way commuter rail trips that expires in 2040. The agreement establishes the compensation paid to BNSF for train crews, maintenance of way and other expensed incurred in the operation of the Sounder Service and is based on actual cost of crew, dispatch and management, as well as cost for maintenance of way and performance

**Agreements with BNSF for Sounder Commuter Rail Service in the Everett-to-Seattle and Lakewood-to-Tacoma Corridors**—On December 18, 2003, Sound Transit entered into a number of agreements with BNSF for, among other things, the purchase of four perpetual easements for commuter rail service between Everett and Seattle, the purchase of railroad right-of-way between Nisqually and Tacoma for service and station improvements, terms for joint use of the railroad right of way and the purchase of operation services in each corridor.

The acquisition of the easements and property occur over a four-year payment period. The first easement in the Everett-to-Seattle corridor closed in December 2003 and the second easement closed in December 2004, each in exchange for a payment of \$79.0 million, and allowing the operation of one round trip commuter train service between Everett and Seattle. Also in December of 2003, Sound Transit paid BNSF \$3.6 million for the purchase of certain parcels of property that will become part of the Lakeview Station and South Tacoma Station and \$4.4 million as a non-refundable deposit for the purchase of railroad right of way on the BNSF's Lakeview Subdivision.

In September 2004, Sound Transit closed on the purchase of the section of the Lakeview Subdivision between Lakewood and Tacoma (the "North Line") and in October 2005 the section of the Lakeview Subdivision between Nisqually and Lakewood (the "South Line"). See Note 9 for a description of amounts paid at closing and promissory notes provided to BNSF.

The acquisition of the remaining easements in the Everett-to-Seattle corridor will close as follows:

	Closing Date	Due on Closing
3rd Easement	December, 2006	\$50 million
4th Easement	December, 2007	\$50 million

Each easement allows the addition by Sound Transit of one round trip commuter train service. Closing by Sound Transit on the third and fourth easements are conditioned upon the lack of a determination that certain permits for improvements that BNSF is designing to construct are highly unlikely to be

issued. If this condition is not met, Sound Transit has the option to not close with no additional payment due and no additional train service beyond that provided by prior accepted easements.

The easement acquisition agreements also contain post-closing options for Sound Transit for the resale of the second, third and fourth easements to BNSF should it appear that permitting will not be allowed. These options may be exercised as follows:

	Earliest Exercise Date	Latest Exercise Date	Exercise Price
2nd Easement	Nov. 2006	Nov. 2010	\$27.5 million
3rd Easement	Dec. 2008	Dec. 2012	\$50 million
4th Easement	Dec. 2009	Dec. 2013	\$50 million

Total payments in respect of the Nisqually-to-Tacoma corridor under the agreement to BNSF are \$32 million, including interest on the promissory notes.

The Joint-Use Agreement for the Everett-to-Seattle corridor provides the mechanisms for determining the cost to Sound Transit for the maintenance-of-way and rehabilitation activities on the corridor. The Joint-Use Agreement also provides the conditions necessary to be satisfied by Sound Transit (such as the acquisition of certain environmental permits) before it may use its commuter rail easements. The Joint-Use Agreement for the Lakewood-to-Tacoma corridor sets forth the cost to BNSF for the maintenance of way and rehabilitation activities on the corridor and Sound Transit's and BNSF's responsibilities during the interim period before Sound Transit starts operating on each portion of the corridor. Initially, BNSF will retain all maintenance activities associated with the line. However, as Sound Transit incrementally commences construction of the line, Sound Transit will be responsible for maintenance activities on those sections.

The Everett-to-Seattle Commuter Rail Service Agreement set forth the terms for the actual operation of the commuter trains by BNSF and the compensation paid to BNSF for train crews, maintenance-of-way and other expenses incurred in the operation of the Sounder service between Seattle and Everett. The compensation is structured to provide flat rates for maintenance and crews with inflation adjusters plus performance incentives